SUPREME COURT, U. S.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 880

EMMANUAL BLAZ MRKONJIC-RUZIC,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on October 24, 1968.

CITATIONS TO OPINIONS BELOW

An Indictment charging petitioner with a violation of 18 USC §1001, false statement to an agency of the United States, was returned on January 7, 1966, by the Grand Jury of the United States District Court for the Northern District of California, Northern Division, Sacramento. In substance, the Indictment charges petitioner with knowingly giving false answers while under oath to questions asked of him in an Application to File Petition for Naturalization lodged by petitioner at Sacramento on June 17, 1965.

Upon his plea of not guilty petitioner was tried and convicted by a jury on March 15, 1967, before The Hon. Sherrill Halbert, United States District Judge. On March 29, 1967, petitioner was sentenced to the statutory maximum of 5 years imprisonment pursuant to 18 USC §4208 (c) and ordered sent for a 90 day study subject to modification in accordance with 18 USC §4208 (b).

Timely appeal was made.

The per curiam opinion of the Court of Appeals is unreported and is printed in appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on October 24, 1968. Rehearing was denied on December 2, 1968. The jurisdiction of this Court is invoked under 28 USC Section 1254 (1).

QUESTIONS PRESENTED

I

Whether a defendant convicted of a crime in a federal court is deprived of his Fifth Amendment liberty by the divergent interpretations placed on the charging statutory language by the several district courts.

II

Whether this court should exercise its supervisory power over federal district courts by correcting judicial conduct at the trial court level which foreclosed the defendant from a fair trial and thereby constituted a denial of due process.

STATUTE INVOLVED

The statutory provision involved is 18 USC Section 1001. It is printed in appendix A.

STATEMENT

Adversary counsel in effectuating their respective roles at times develop polarized views and opinions as to the most efficacious manner of trial fact presentation. This case bears witness to such polarization.

On the one hand, government counsel's position is simple. Petitioner signed an application for naturalization under oath. One particular answer among others was untrue.

The question was

"Other names I have used are .....".

The directions supplied on the form of "Application to File Petition for Naturalization" were:

> "Print or type here any other name you have ever used, including maiden name".

The petitioner typed in "None", crossed it out and typed in "Emmanual Blaz Mrkonjic Ruzic". In answer to a previous question "My Name is....." the petitioner had typed "Emmanual Blaz Rusic".

Page 5 of the form of application then used contained the following admonition:

> *"Unless you answer* all *items in full,* it may be necessary to *return* the application to you". (Emphasis ours.)

The form now employed by the Immigration and Naturalization Service contains a warning:

> "Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact."

At a hearing conducted under oath in Sacramento by Earl C. Bray, attorney for the Immigration and Naturalization Service, hereafter referred to as the Service, petitioner denied the use of a name other than Emmanual Blaz Mrkonjic Ruzic (RT 286, 291).

Ultimately petitioner signed, under oath, a four page document in two parts, Form N-400 (Rev. 8-1-63) that is the basis of this Indictment.

Over a period of years, petitioner in fact had used many names. Among them are Manuel Blaz Ruzic

(RT 34) used in his so-called *Curriculum Vitae* for Stanford University where he was a graduate student. To an investigator for the Service in a so-called Private Bill Unit hearing, John Ruggiero of New York City, petitioner gave the name Manuel Blaz Ruzic (RT 65), the family name Bojanic (RT 105) and Emanuel Blaz Rusic (RT 105). With Father Thomas J. Malone of the Maryknoll Fathers, while petitioner was a seminarian, he was known alternately as Bojanic and Ruzic (RT 206, 207). To Charles Bergerson of the Voice of America where the petitioner worked intermittently he used both Bojanic and Ruzic (RT 234, 244 and 258).

When examined in Dallas, Texas, by Donald C. Mock, of the Service's Travel Control, at a time when petitioner was a student at Texas Christian University, he used Ruzic (RT 423) and Ignatius Bojanic (RT 431). The government file also revealed that when admitted into the country he affected Cherubim Ruzic, Dr. Emmanuel Mozart and L'Abbe Blaz Mrkonkic Ruzic (RT 434).

When petitioner took the stand he admitted the use of Blaise C. Ruzic (RT 535), Ignatius Bojanic (RT 543), Professor and Reverend Emmanuel B. Ruzic (RT 597), E. B. Roseman (RT 612) and Reverend Blaz Mrkonjicruzic (RT 628). He also received mail from Yugoslavia under another name, Kraljich (RT 657).

The story of how petitioner came to use these names is involved but interesting. Using petitioner's recitation as the basis or frame, reference will also be

made to the government's case where the same or similar material was presented.

Petitioner was born in Yugoslavia, in the part known as Croatia in 1930 (RT 444). He, and his family moved to Zagreb and at age 19 he entered the theological seminary affiliated with the University of Zagreb (RT 446). As the result of local civil disorders, he and other seminarians were arrested and detained for a three month period in 1951 (RT 447). He fled Yugoslavia in 1952 (RT 449) passing through Italy (RT 449) en route to Paris, France.

While in Paris he was hospitalized for TB (RT 450) and was a student at several seminaries (RT 248, 249). Leaving France in 1953 (RT 249, 250), he went to Caracas, Venezuela (RT 451) and ultimately arrived in Canada (RT 248-250). As a student, he entered the USA in August, 1954 (RT 247) where he enrolled at Catholic University, Washington, D.C. (RT 459-460).

Periodically he would return to Canada and on one of his trips, and while a guest at a convent at Sherbrook, he purloined the transcript of grades and studies, known in Yugoslavia as an Index, from a nun named Sister Ignatius or Matija Bojanic or Sister Ignacija (RT 460, 461, 139, 140). He denied stealing the Index, saying that the sister gave it to him to translate. He did not know what happened to the original (RT 620, 621). The Index was altered, translated into English and used by defendant as his own wherever he enrolled as a student in the USA whether it was Catholic University, Abiline Christian, Texas

Christian, University of California or Stanford. From and through the use of the Index he arrogated to himself the names Ignatius and Bojanic.

Present at the private bill hearing in New York City conducted by Mr. John Ruggiero of the Service was a Maryknoll priest, a Father John McGovern, whose subsequent letter to Father Malone reviews petitioner's life up to January, 1968 in a most derogatory fashion. Beginning at page 244 and continuing through page 255 of the transcript is the record of Ruzic's failures as a seminarian in Paris, Canada and the USA, his use of the forged Index, his religious vacillations between the Catholic and Lutheran faiths, his various jobs and his manipulation of others for his benefit.

After either being expelled from or voluntarily leaving the Maryknoll Fathers (RT 205) on January 16, 1958, he returned to Canada (RT 117), only to return to Abilene, Texas in March, 1958 (RT 484).

Ruzic was deported, or in lieu left voluntarily, to go to Canada (Exhibit 15) via Buffalo, New York, in the latter part of 1958 (RT 485, 486). Upon being refused readmittance at Buffalo in January, 1959 (RT 486) he surreptitiously reentered through Hamilton, Ontario, and Detroit and returned to Dallas (RT 486). Apart from a California sojourn at Sequoia National Park where he worked in the summer of 1959 (RT 487, 488) he remained in the Dallas area as a student at Texas Christian University (RT 489-493) receiving permanent resident status in May, 1960 (RT 493).

Ruzic ultimately came to San Francisco (RT 494), lived in Monterey during the summer of 1960 (RT 497), in the fall of 1960 at Palo Alto (RT 320, 498), enrolled and was a teaching assistant at the University of California during most of 1961 (RT 321, 499-501). After acceptance as a student at Stanford, petitioner lived in Palo Alto from the spring of 1962 up to the spring of 1964 (RT 321, 502-509) ultimately receiving a Master's degree from Stanford.

From these peregrinations, one may properly doubt if Ruzic ever was a seminarian in Yugoslavia. But in any event, building upon the use of a false name, Ignatius Bojanic, and a false set of student documents taken from a Croatian nun, petitioner came a long way. To offset these undisputed and unsavory facts, defense counsel, William Lally, formerly Assistant United States Attorney, sought to establish through the enormity of the file in the Service's possession that no government official was in fact deceived, despite Ruzic's admittedly untrue answers at his Sacramento hearing and elsewhere.

Mr. Lally began to execute his plan immediately after the jury was selected, countering government counsel's opening statement with one of his own in which he accused the government of bad faith and trickery (RT 24). While the court was critical of his conduct (RT 28) its remarks were restrained (RT 28-30).

Later defense counsel used the word "snatch" to characterize action by the United States attorney,

which brought on a mildly critical exchange between the court and counsel (RT 46).

Defense counsel sought to raise a *Miranda* type objection as to evidence of the New York City Private Bill investigation conducted by Mr. Ruggiero for the Service but did not get very far (RT 69).

A more vitriolic exchange occurred between the court and counsel (RT 82), which can be denominated feisty on the part of defense counsel.

Later on that same trial day, another rather heated exchange between the court and counsel occurred over counsel's request to see the Service's voluminous Ruzic file (RT 115-117).

Another exchange begins on page 234 where Mr. Lally snidely characterized as "kindly" the turning over to him of some lengthy documents regarding Mr. Ruzic's early American career. By this point of time the court has a view of Mr. Ruzic and his activities that is at odds with defense counsel's attempts in his opening statement to make out his client as "lily white" (RT 238), and the court said so in a no uncertain but restrained fashion (RT 239-240).

Faced with the necessity of laying a foundation requisite to the admission of a document, government counsel inquired if the requisite foundation could be waived (RT 277). Defense counsel responded in querulous fashion that "Mr. Lally waives nothing". Aptly, the court described this attitude as "unreasonable" as well it was.

At the conclusion of the testimony of the government witness, the Court ordered defense counsel to do all of his foundational cross-examination or be precluded from raising the issue (RT 279). Again the language of the court was firm but temperate. It would brook no trifling.

Because government counsel kept repeatedly drawing forth documents from a file on his table and offering them in evidence, one at a time, defense counsel asked that the whole file be admitted and that he be permitted to examine it in detail (RT 362). The court told him to stop—that he could put his own case in later—Lally persisted—again the court stopped him (RT 363) but without acrimony, merely with asperity and shortness.

A witness from the California State Department of Education, a Mr. Price, brought to court an Application for Teaching Credentials and associated documents to the effect that as late as 1965, petitioner continued to use the altered Index of Sister Ignacija Bojanic as his own (RT 363-384). After prolonged colloquy over admissibility and foundation, the court strongly admonished defense counsel for constantly, through the office of cross-examination, trying his case before it was his turn (RT 373).

But if the court leaned on defense counsel at every possible opportunity with varying weight, consider the holocaust unleashed at Mr. Lally for 5 pages of transcript (RT 435-440). This outburst actually was begun when defense counsel objected to the prosecutor employing the phrase "sneaked back in" to char-

acterize Ruzic's return to the USA through Detroit rather than through Buffalo, his exit port (RT 435). In the presence of the jury, the court was bitingly critical of Mr. Lally, telling him that he was trying to testify himself (RT 436), telling the jury to pay no attention to the lawyers (RT 436) and then once the jury was excused really letting defense counsel have it right between the eyes. Lally was severally accused of baiting the court (RT 437), trying his case by innuendo (RT 437), and because of his skill, intentionally doing things to disrupt the normal court procedure (RT 438). The court criticized defense counsel for not standing while objecting and for making a speech (RT 439). This language would be enough to cow all but the toughest defense lawyer in criminal cases.

But its worst effect was in telling the jury "not to pay attention to these lawyers" as if to say to the jury that defense counsel was caviling with them to hide from them the truth. Such a characterization could only have substantially injured whatever chances with the jury Ruzic might have had.

Ruzic's cross-examination was devastating. He admitted that he might have claimed falsely to have studied in Rome (RT 541), not telling about all the places at which he had studied (RT 541, 570), exaggerating years, courses taken, and grades received at some places of study (RT 542, 543), using the purloined name of Bojanic (RT 546), using Sister Bojanic's Index as late as 1961 (RT 551), at the University of California as his own (RT 541, 570).

Ruzic also admitted giving Sister Ignacija's records to Texas Christian as his own (RT 551), showing them to the Maryknoll Fathers (RT 551), giving them to Catholic University (RT 552), and claiming an academic degree never awarded to him (RT 554).

Ruzic was forced to admit that in every instance of entering a school or university using his false credentials, he was unable to perform, lacked the claimed background and failed in his studies (RT 558). He also admitted to giving false background information when seeking employment from the Voice of America (RT 579), falsely claiming to have studied at the Sorbonne in Paris (RT 582), and falsely claiming to have worked in Paris for UNESCO when applying for a teaching position at Great Falls College (RT 586, 587). The final clincher was having to admit that he had never presented himself in this country in a true, honest and correct fashion (RT 589).

While cross-examination went on for 100 more pages, it was just more of the same false representations (RT 590 to 692), including grade tampering at TCU (RT 599), even to having to admit that what purported to be his own transcript, received from Yugoslavia was the same as Sister Bojanic's Index (RT 623-624). To further accentuate the obvious, Ruzic was finally forced to admit that he was untruthful to the Service when he failed to inform the Service of his voluntary return to Canada to escape deportation (RT 627). So that anything done by way of rehabilitation on redirect examination was probably for naught. The jury had heard too much.

Obviously, as a matter of hindsight, this was no case to try before a jury. The government, as usual, had too much evidence. But defense counsel was entitled to a break better than he got, as was R[illegible]zic. Again, hindsight dictates a law attack and at b[illegible]t a court trial. But who knows now what was best?

REASONS FOR GRANTING THE WRIT

1. To be actionable under 18 USC §1001 the declaration or statement must be material in that it would bear on the decision-making process of a department or agency. *Brandow v. U.S.*, 9th Cir. 1959, 268 F. 2d 559, 562 and 564, or the Immigration and Naturalization Service, *Dear Wing Jung v. U.S.*, 9th Cir. 1962, 312 F. 2d 73, *U.S. v. Udani*, D.C. Cal. 1956, 141 F. Supp. 30, and *U.S. v. Bridges*, D.C. Cal. 1949, 86 F. Supp. 922.

Attention will now be directed to two lines of authority in the federal courts that deal with the simple negative response. One line holds that a denial or negative response is within §1001. Examples are *U.S. v. Blake*, D.C. Mo. 1962, 206 F. Supp. 706, *U.S. v. Glarraputo*, D.C. N.Y. 1956, 140 F. Supp. 831, cf. *U.S. v. Adler*, 2nd Cir. 1967, 380 F. 2d 917, 922. The other line holds that a negative response is not a statement or report within the ambit of §1001. It is exemplified by *Paternostro v. U.S.*, 5th Cir. 1962, 311 F. 2d 298, 305 and 309, *Friedman v. U.S.*, Mo. Cir. 1967, 374 F. 2d 363, *U.S. v. Davey*, D.C. N.Y. 1957, 155 F. Supp. 175, 176, *U.S. v. Stark*, D.C. Md. 1955, 131 F. Supp.

190, 199, *U.S. v. Philippe,* D.C. S.D. N.Y. 1959, 173 F. Supp. 582, and *U.S. v. Allen,* D.C. S.D. Cal. 1961, 193 F. Supp. 954.

These divergent views pivot upon whether the governmental agency to whom the false report or statement was made is an investigational agency or one that can act independently upon the supplied false information and whether "no" or "none" by ordinary language usage is a "statement or report" within the meaning of §1001. Perhaps there was also some humanity in the liberal line represented by *Paternostro,* ante, and *Allen,* ante, in that the defendant is given the benefit of a strict and narrow statutory construction.

It is submitted that, regardless of the reason, *Paternostro,* ante, is more persuasive and yields a result which your petitioner asks this court to adopt. In any event, the conflict among the federal courts should be resolved.

2. The trial judge must be impartial. Even an *appearance* of bias may fatally infect the proceedings.[1] This task is not an easy one.

> "A judge, at least in a Federal Court, is more than a moderator . . . Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that, in the end, depends primarily upon the judge."[2]

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[1] *Bollenbach v. United States,* 326 U.S. 607; *Wilson v. United States,* 250 F.2d 312.

[2] *Brown v. Walter* (C.C.A. 2, Vt., 1933), 62 F.2d 798, 799-800 (1933). This statement was made by the late Judge Learned Hand, speaking for the Second Circuit.

The trial judge must be patient and "not be thrown off balance by provocations which frequently occur during a trial." In an Illinois case, the court says: "It is essential that jury trials shall be managed fairly, and that trial judges shall not only be just to both sides, but that they shall conduct themselves, in such a manner that an impartial state of mind is apparent to all concerned."[3]

> "The Judge presiding at a trial should maintain an impartial attitude. He must appear neutral, and exercise patience toward the participants. The judge should not be thrown off balance by those *provocations* which a trial contest can be expected to produce. Even if exposed to *great provocation,* the trial judge is not thereby justified in accusing a party's lawyer of unfairness or in holding him up to contempt before the jury, and should not show hostility to him or otherwise treat the attorney so as to prejudice the interests of his client. The required administration of the trial and necessary control of conduct of counsel can and should be performed effectively without inflicting unnecessary damage to a party's cause."[4] (Emphasis ours.)

> "The real object of a trial is to secure a fair and impartial administration of justice between the parties to the litigation. The responsibility of striving for an atmosphere of unpartiality during the course of a trial rests upon the trial judge. His conduct in trying a case must be fair to both sides, and he should refrain from remarks which

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[3]*People v. Marino,* 414 Ill. 445, 111 N.E.2d 534, 538 (1953).
[4]*Skelton v. Beall* (Fla.), 133 So.2d 477, 481 (1961).

might injure either of the parties to the litigation."[5]

3. Determination of the question whether the trial judge has overstepped the bounds of judicial propriety must be made on a case-to-case basis.[6]

There are certain principles which can serve as guides to measure judicial conduct.[7] Among them are:

(1) Harassment of defense counsel, prejudicial to his client—and this can take many forms—may also require a new trial. For example, the Court may not hamper or embarrass counsel in the conduct of the defense by disparaging remarks or rulings which prevent counsel from effectively presenting his case or from obtaining full and fair consideration of that case by a jury.[8]

(2) A trial judge should never reprimand or censure counsel in the presence of the jury. "Trial Courts should proceed with dignity, rule impartially, and say as little as possible in the trial."[9] A trial attorney "owes to the Court, because of the position he occupies, the utmost deference and respect," but, "the court owes to him an equal obligation of courtesy and consideration. . . . In the heat of a trial sharp differences of opinions do

[5] *Hanzen v. St. Paul City Ry. Co.*, 231 Minn. 356, 43 N.W.2d 260, 264 (1950).

[6] *Brock v. North Carolina*, 344 U.S. 424; *Riley v. Goodman*, 315 F.2d 232.

[7] *Herron v. Southern Pacific Co.*, 283 U.S. 91.

[8] *People v. Becker*, 210 N.Y. 274, 104 N.E. 396; *People v. Kepner*, 267 App. Div. 838, 46 N.Y.S.2d 111; *People v. Adler*, 274 App. Div. 820, 80 N.Y.S.2d 210.

[9] *Kent v. State*, 53 Okla. Crim. 276, 10 P.2d 733 (1932).

arise and things are said which would have been better left unsaid."[10] This does not justify the reprimanding of counsel in the presence of the jury.

(3) "The trial judge should use only such language as is essential to the requirements of the situation and should not belittle counsel's argument or cast unwarranted reproaches on counsel. In the eyes of the jury counsel and client are so closely identified that a trial judge's belittling of counsel is often prejudicial to the client."[11]

Quite often, what appear to be routine comments by the court, when viewed independently are insufficient to warrant reversal. But when the record is reviewed in its entirety by an appellate court, the trial court's remarks may, in the aggregate, reveal a clear and consistent pattern of judicial bias.[12]

In short, an attorney is entitled to treatment from the trial judge that will not prejudice the rights of his client. This is a matter of right, not of indulgence.[13]

Appellate courts are exceedingly reluctant to reverse cases because of the misconduct of the trial judge. They are more inclined to recognize the misconduct, but pardon the judge on the theory that the

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[10] *Goldstein v. United States* (C.C.A. 8, 1933), 63 F.2d 609, 613.

[11] *Weinberg v. Pavitt*, 304 Pa. 312, 155 Atl. 867, 871 (1931).

[12] *Sunderland v. United States*, 19 F.2d 202; *People v. Becker, supra*, note 8; *Commonwealth v. Fields*, 171 Pa. Super. 177, 90 A. 2d 391; *State v. Phillips*, 59 Wash. 252, 109 Pac. 1047; *Robertson v. State*, 38 Tex. 187.

[13] *Grock v. United States*, 298 Fed. 544.

misconduct was not shown to prejudice the jury, which can rarely be done. This affords the litigant no relief. It is "like a rapier thrust in a vital spot, then withdrawing the blade with apologies."[14] The correction for this widespread and well-recognized problem rests almost entirely with the judiciary. Constructive criticism never hurts anyone and may help. "Let justice be done lest the Heavens fall."[15]

In the light of the foregoing, it is urged that the district court did in fact deny to this petitioner his right to a fair trial.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
December 19, 1968.

Respectfully submitted,
GREGORY S. STOUT,
Attorney for Petitioner.

(Appendices A and B Follow)

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[14] *Brotherhood of Railroad Trainmen v. Brown*, 170 Okla. 67, 38 P.2d 529, 532 (1934).

[15] Remarks of Chief Judge Harold M. Stephens at the laying of the cornerstone of the United States Courthouse for the District of Columbia, December 25, 1950.

Appendix A

18 USC 1001—Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both. June 25, 1948, c. 645, 62 Stat. 749.

Appendix B

United States Court of Appeals
For the Ninth Circuit

No. 22,108

Emmanual Blaz Mrkonjic-Ruzic,
Appellant,

vs.

United States of America,
Appellee.

[October 24, 1968]

On Appeal from the United States District Court.
for the Eastern District of California

Before: CHAMBERS, HAMLEY and MERRILL,
Circuit Judges

Per Curiam:

Appellant was properly charged. *Conerly v. United States,* 350 F.2d 679 (9th Cir. 1965).

Appellant's answer in the negative in response to an inquiry constituted a false representation under 18 U.S.C. §1001. *Tzantarmas v. United States,* ..... F.2d ..... (9th Cir. 1968) [22,798 October 17, 1968]; *Brandow v. United States,* 268 F.2d 559 (9th Cir. 1959).

Appellant was not deprived of a fair trial by reason of the District Court's reponse to provocative conduct on the part of appellant's trial counsel.

Judgment affirmed.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 880

EMMANUAL BLAZ MRKONJIC-RUZIC, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on October 24, 1968. A petition for rehearing was denied on December 2, 1968. The petition for a writ of certiorari was filed on December 28, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

331-417—69

QUESTIONS PRESENTED

1. Whether petitioner's false statements to the Immigration and Naturalization Service that he had never used an alias constituted "false statements" under 18 U.S.C. 1001.

2. Whether the trial court's reprimands of defense counsel deprived petitioner of a fair trial.

STATEMENT

After a trial by jury in the United States District Court for the Northern District of California, petitioner was convicted of making false statements in a matter within the jurisdiction of the Immigration and Naturalization Service, in violation of 18 U.S.C. 1001. He was sentenced to 5 years' imprisonment pursuant to the provisions of 18 U.S.C. 4208 (b) and (c). The court of appeals affirmed the conviction, *per curiam* (Pet. App. B).

Petitioner, a Yugoslav immigrant, lawfully entered the United States through Canada in 1954 (R. 247).[1] Upon his arrival, he entered the Croatian Franciscan Monastery in Washington, D.C., but left shortly thereafter (R. 456, 459–460). In 1955, while visiting a convent in Quebec, petitioner purloined the Index of Studies (the Yugoslavian counterpart of a certified transcript from an American university) issued by the University of Zagreb Catholic Theological Faculty to one Sister Ignacija (nee Matija Bajonic) (R. 137, 138, 145, 620–621). Subsequently, petitioner translated the Index into English, altered the name

[1] "R." denotes the Record in the court below, which has been lodged with the Clerk of this Court.

on the Index to conform to his then-current alias, and substituted a photograph of himself for that of Sister Ignacija. Using this Index as evidence of his past academic achievements, petitioner obtained entrance to various institutions of higher education in this country, such as Texas Christian University, the University of California, and Stanford University, and to the Mary Knoll Seminary, whence he "voluntarily" departed upon being exposed as an imposter (R. 34–35, 43, 51, 173, 193, 203, 490, 499–501). Among the names petitioner assumed during the period from his entrance into the country until his arrest were Brother Blaise C. Ruzic (Catholic University, R. 535); Rev. Emmanuel B. Ruzic (during a sojourn in southern California, R. 597); Professor Emmanuel B. Ruzic (Texas Christian University, R. 597); Manuel Blaz Ruzic (Stanford University, R. 34); and E. B. Roseman and Kraljich, under which he received mail at various times (R. 612, 657).

Petitioner came to the Immigration and Naturalization Service office in Sacramento, California, on June 17, 1965; there he applied to file a petition for naturalization and lodged his completed questionnaire (INS Form N–400) (R. 284, 286). In the questionnaire, which was subscribed under oath, petitioner gave his name as Emmanuel Blaz Mrkonjic-Ruzic (R. 287, 289, 290), and in response to a question asking what other names which he may have used, stated "none" (R. 291). When interviewed under oath by an Immigration and Naturalization officer,

petitioner orally denied ever having utilized a name other than the one set forth in the application form (R. 291).

At his subsequent trial for violation of Section 1001, petitioner did not dispute that his statements were false. Rather, he contended that they were not material, since the Service was aware of the aliases he had employed since entering the United States.

ARGUMENT

1. 18 U.S.C. 1001 proscribes the making of any "false, fictitious or fraudulent statements or representations" "in any matter within the jurisdiction of any department or agency of the United States." The purpose of the statute is "to protect the authorized functions of governmental departments and agencies from perversion which might result from * * * deceptive practices * * *". *Gilliland* v. *United States,* 312 U.S. 86, 93; see also *United States* v. *Adler,* 380 F. 2d 917, 922 (C.A. 2), certiorari denied, 389 U.S. 1006; *Frazier* v. *United States,* 267 F. 2d 62, 65 (C.A. 1); *Pitts* v. *United States,* 263 F. 2d 353, 358 (C.A. 9), certiorari denied, 360 U.S. 935; *United States* v. *Philippe,* 173 F. Supp. 582 (S.D.N.Y.). Here petitioner does not dispute that he knowingly and wilfully withheld information from the Immigration and Naturalization Service by means of his false negative responses to questions propounded. He argues that a simple negative response is not a "statement" within the purview of the statute. It is evident, however, that a denial made in the course of seeking some benefit from the government can pervert its functions

as much as an affirmative misstatement. By his denial that he had used other names, petitioner sought to keep the government from discovering his activities under those other names—activities which would have shown that he was not a fit candidate for citizenship. Thus, the denial was properly found to have been material to the INS's processing of his application.

The circuit and district courts have found false denials, whether oral or written, to be "statements" proscribed by Section 1001 in the following contexts: (1) false denial of a criminal record in applying for a government job: *Blake* v. *United States,* 323 F. 2d 245 (C.A. 8); *Pitts* v. *United States,* 263 F. 2d 353 (C.A. 9), certiorari denied, 360 U.S. 935; *United States* v. *Giarraputo,* 140 F. Supp. 831 (E.D.N.Y.); (2) false denial of membership in or association with the Communist Party in applying for a government job: *Odgen* v. *United States,* 303 F. 2d 724 (C.A. 9); *Frasier* v. *United States,* 267 F. 2d 62 (C.A. 1); Cf. *Hupman* v. *United States,* 219 F. 2d 243 (C.A. 6), certiorari denied, 349 U.S. 953; (3) false denial of a material fact in an Immigration and Naturalization proceeding initiated by the defendant: *Tzantarmas* v. *United States,* decided October 17, 1968, No. 22,798 (C.A. 9), petition for a writ of certiorari pending, No. 1266 Misc., this Term. Cf. *United States* v. *Larocca,* 245 F. 2d 196, 199 (C.A. 3).

The line of cases on which petitioner relies as holding that Section 1001 does not apply to exculpatory negative answers, *e.g., Paternostro* v. *United States,*

311 F. 2d 298 (C.A. 5),[2] is inapplicable here. In each of those cases, the false denial was made to law enforcement officials in the course of an investigation directed against the defendant. The distinguishing feature of such cases is that the defendant neither initiated the contact with the investigation agency, nor was seeking any form of governmental privilege or benefit (see 311 F. 2d at p. 309). Petitioner here was not being questioned as a suspect under investigation when he gave his false answers; he was affirmatively seeking the benefits of naturalization. Thus, no conflict exists.

2. Petitioner also argues that the district judge deprived him of a fair trial by allegedly improper and prejudicial comments directed at defense counsel, and adverts to several discussions between defense counsel and the court, and remarks directed at defense counsel by the court. This question was fully aired in the court of appeals. In any event nothing was said in the presence of the jury which amounted to more than a mild reprimand for obstreperous and vexatious conduct. On two occasions when the court repri-

[2] See also *Friedman* v. *United States*, 374 F. 2d 363 (C.A. 8); *United States* v. *Allen*, 193 F. Supp. 954 (S.D. Cal.); *United States* v. *Davey*, 155 F. Supp. 175 (S.D.N.Y.); *United States* v. *Levin*, 133 F. Supp. 88 (D. Col.); *United States* v. *Stark*, 131 F. Supp. 190 (D. Md.). But see *United States* v. *McCue*, 301 F. 2d 452 (C.A. 2), certiorari denied, 370 U.S. 939 (volunteered false denial by one who was the object of a criminal investigation held to be a false statement).

manded counsel more severely for conduct which it found unprofessional, it first excused the jury (R. 28–30, 435–440). In these circumstances, petitioner was not prejudiced.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 880

EMMANUAL BLAZ MRKONJIC-RUZIC, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted to bring to the Court's attention information relating to electronic surveillance involving petitioner which has been uncovered since the brief in opposition in this case was filed.

Although petitioner was not at any time the subject of electronic surveillance directed against him, he did participate in one conversation that was overheard during the course of a surveillance conducted for the gathering of foreign intelligence information. The overheard conversation had absolutely no relation to the crime of which petitioner was convicted.

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Petitioner was convicted under 18 U.S.C. 1001 of making false statements to the Immigration and Naturalization Service. The false statements were contained in a petition for naturalization which petitioner signed Emmanuel Blaz Mrkonjic-Ruzic and filed with INS on June 17, 1965.[1] The overhearing of petitioner's conversation occurred in October 1960. The total report of the conversation consisted of a one and a half line entry on the log of the surveillance.

We have normally not sought to burden this Court with the task of reviewing the logs of overheard conversations. In this case, however, we believe that it would conserve judicial time if this Court were to review the one and a half line entry involved in this case to satisfy itself that the overheard conversation was not relevant to the instant prosecution. In this way the delay attendant upon a remand to the district court could be avoided. We have, therefore, submitted to the Clerk of this Court a sealed envelope containing the log reflecting the conversation of petitioner that was overheard.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1969.

[1] This document was introduced in evidence at the trial (GX 41) and is part of the record before this Court.

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ADDITIONAL MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted on the question of the effect of this Court's decision in *Alderman* v. *United States,* No. 133, O.T., 1967, decided March 10, 1967, on the disposition of this case.

In a Supplemental Memorandum For the United States which we recently submitted in this case we advised the Court that on one occasion petitioner participated in a conversation that was overheard during the course of a surveillance conducted for the gathering of foreign intelligence information and we submitted the log of that surveillance to the Court for

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in camera examination. The surveillance in question was specifically authorized by the Attorney General.

In our Supplemental Memorandum we asked the Court to examine the one and a half line log entry concerning this overhearing of petitioner to satisfy itself that the overhearing had no possible relation to the prosecution of petitioner. We continue to urge the Court to examine this log and to deny certiorari on the basis of its *in camera* determination that the overheard conversation was totally unrelated to the prosecution.

We recognize that the position which we urge here is not consistent with this Court's recent decision in *Alderman*. We ask the Court, however, to recognize a narrow exception to the disclosure rule of *Alderman* for those instances such as that here, where it is apparent from the nature of the premises subject to the surveillance that the surveillance was being conducted for the purpose of gathering foreign intelligence information. See Petition for Rehearing, *Ivanov* v. *United States*, No. 11, this Term.

The surveillances which have been authorized for gathering foreign intelligence information are not intended to provide evidence for use in criminal prosecutions.[1] Yet, within recent months, we have uncovered at least five cases pending in some appellate stage, one case pending on indictment and two investigations in which persons who have been prosecuted or are under

[1] Indeed, we originally anticipated that only rarely during such a surveillance would someone involved in a criminal prosecution be overheard. See Brief for the United States, *Alderman* v. *United States*, No. 133, O.T., 1967, p. 5.

investigation have at one time or another stumbled into an electronic surveillance being conducted to gather foreign intelligence information and participated in a conversation that was overheard. The case of the petitioner here is typical of this type of incident. See also Additional Memorandum for the United States, *Clay* v. *United States,* No. 271, this Term.

In this case, the petitioner, on one occasion five years before the date of the crime charged in the indictment, fell into an electronic surveillance and was overheard participating in one brief conversation. It is apparent from an examination of the one and a half line surveillance log entry reflecting that conversation that the overhearing of the conversation could not possibly have provided evidence against the petitioner. It would not take a trial judge five minutes to make that determination. Yet, it is also apparent from an examination of that log that the government could not disclose, except to a court,[2] where this conversation was overheard.

To say in such cases that the government must either disclose or dismiss is, in practical terms, to provide the defendant with immunity from prosecution for all crimes past, present or future. For if the government can not make an "ex parte determination of relevancy" (*Kolod* v. *United States,* 390 U.S. 136,

[2] The governemnt did in one instance advise a defendant in a criminal case that he had been overheard during the course of such a surveillance. Although the Court issued a protective order prohibiting the defendant or his counsel from disclosing that information, two weeks after the disclosure was made an article appeared in the newspapers reciting the facts of the surveillance.

137) it would have to disclose or dismiss in any case involving that defendant, regardless of how far removed that prosecution was from the time and place of the surveillance, and it is equally clear that disclosure could never be made.

In the opinion of the court in *Alderman* v. *United States,* No. 133, O.T. 1967, Mr. Justice White noted "the matter comes down to a judgment whether *in camera* inspection would *characteristically* be sufficiently reliable when national security interests are at stake" fn. 15 [emphasis added]. The court's opinion apparently resolves the issue on the basis of the superiority of the adversary system "where an issue must be decided on the basis of a large volume of factual materials" and in order to guard "against the possibility that the trial judge, through lack of time or unfamiliarity with the information contained in or suggested by the materials, will be unable to provide the scrutiny which the Fourth Amendment exclusionary rule demands." The court also noted that its resolution "will avoid an exorbitant expenditure of judicial time and energy and will not unduly prejudice * * * the public interest" and that since the disclosure will normally involve only the defendant's own conversation "disclosure should therefore involve a minimum hazard to others." It is clear that in cases such as this, where there is a brief overhearing during the course of a surveillance being conducted to gather foreign intelligence information, these considerations relied on by the Court in *Alderman* are not present.

Since experience indicates that such instances of a criminal defendant stumbling briefly into a foreign

intelligence surveillance will not be infrequent, we submit that, where the overhearing of defendant was obviously inadvertent and the matter can be easily and quickly resolved by the district judge, a limited exception to the adversary rule of *Alderman* should be recognized if it is apparent from the nature of the premises that the surveillance was being conducted to obtain foreign intelligence information and that the government could not disclose that surveillance to the defendant.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1969.

U.S. GOVERNMENT PRINTING OFFICE 1969

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

MRKONJIC-RUZIC *v.* UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 880. Decided April 1, 1969.

PER CURIAM.

The petition for a writ of certiorari is granted, the judgment is vacated and the case is remanded to the United States District Court for the Eastern District of California for further consideration in light of *Alderman* v. *United States*, 394 U. S. —, decided March 10, 1969.

MR. JUSTICE BLACK dissents.